

Message Text

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EUR/CE FOR SUSAN KLINGAMAN

PLEASE PASS SEC FOR BOROWSKI

EO 11652: NA

TAGS: SZ

SUBJ: SIC - AIC CASE

REF: (A) BERN 2701; (B) BERN 2656; (C) BERN 3746; (D) BERN 3888

(E) BOROWSKI/KEMPE TELCONS

1. SUMMARY: WE HAD BEEN TOLD AND WE REPORTED IN REF D THAT THE PROBLEMS DELAYING THE BEGINNING OF COOPERATION BETWEEN COOPERS-LYBRAND OF BASEL AND THE US FIRM (WHICH WE NOW UNDERSTAND TO BE COOPERS-LYBRAND BOSTON) HAD BEEN OVERCOME. SEC (BOROWSKI) HAS TOLD US THAT THREE PROBLEMS REMAIN AND MUST BE RESOLVED QUICKLY. PURPOSE THIS TELEGRAM IS TO DESCRIBE PROBLEMS AS WE AND SWISS FEDERAL BANKING COMMISSION UNDERSTAND THEM, TO PASS ON BERNHARD MUELLER'S SUGGESTION THAT THEY BE DEALT WITH AS PRAGMATICALLY AS POSSIBLE ONCE COOPERATIVE EFFORT BEGUN, AND TO REQUEST ADDITIONAL INSTRUCTIONS AND AND CLARIFICATIONS AS TO QUESTIONS WE SHOULD RAISE WITH SFBC. END SUMMARY.

2. IF WE UNDERSTAND CORRECTLY, THE THREE REMAINING ISSUES RELATE TO A) PAYMENTS TO COOPERS-LYBRAND OF BOSTON; B) ACCESS OF COOPERS-LYBRAND OF BOSTON TO, AND HERE WE ARE NOT CERTAIN, EITHER THE NAMES OF THE INVESTORS AND/OR ACCESS TO THOSE NAMES THROUGH PARTICIPATION

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IN ENCODING THE NAMES, AND (C) PERMISSION FOR

COOPERS-LYBRAND OF BOSTON TO BE PHYSICALLY PRESENT, WITH COOPERS-LYBRAND OF BASEL, WHILE THE LATTER IS CONDUCTING ITS INVESTIGATION IN LUGANO.

3. WITH REGARD TO PAYMENTS TO COOPERS-LYBRAND OF BASEL, MR MUELLER POINTS OUT THAT THE TOTAL AMOUNT AVAILABLE TO PAY FEES RELATED TO THE LIQUIDATION IS SET FORTH IN THE DECREE OF THE SFBC. THIS AMOUNT WAS NEGOTIATED WITH AND AGREED TO BY THE SEC. WE ARE UNCERTAIN, AS IS HE, AS TO THE SPECIFIC NATURE OF THE PROBLEM ON PAYMENT OF THE FEES OF COOPERS-LYBRAND OF BOSTON. WE WOULD APPRECIATE INSTRUCTIONS AS TO HOW AND IN WHAT TERMS IT SHOULD BE RAISED WITH HIM.

4. WITH REGARD TO ACCESS TO NAMES OF INVESTORS, IT IS OUR UNDERSTANDING, AND IT IS THE POSITION OF MR MUELLER, THAT THE QUESTION OF ACCESS IS COVERED IN THE DECREE AND IN HIS LETTER OF JUN 15 TO COOPERS-LYBRAND OF BASEL. THE PURPOSE AND INTENT OF THE TERMS OF THOSE DOCUMENTS, AGAIN AS WE UNDERSTAND IT, IS TO ASSURE THAT COOPERS-LYBRAND OF BOSTON WILL BE IN A POSITION TO CARRY OUT THEIR OBLIGATIONS TO THE U S COURT AND/OR THE SEC IN CONNECTION WITH THE AUDIT AND THE LIQUIDATION OF ASSETS. WE GATHER, FROM WHAT WE HAVE BEEN TOLD BY MR BOROWSKI, THAT COOPERS-LYBRAND OF BOSTON HAS BEEN REFUSED ALL ACCESS TO THE NAMES OF INVESTORS AND THAT THIS WILL PRECLUDE THEM FROM BEING ABLE TO MAKE THE NECESSARY CERTIFICATIONS TO THE SEC AND THE U S COURT. WE WOULD APPRECIATE CONFIRMATION THAT OUR UNDERSTANDING OF THIS QUESTION IS CORRECT, OR CLARIFICATION IF IT IS NOT. WE HAVE RAISED IT WITH MR MUELLER, ON THE BASIS OF OUR UNDERSTANDING OF THE PROBLEM AS SET FORTH ABOVE. HIS RESPONSE WAS THAT IT IS BEST TO GET THE COOPERATION UNDERWAY. ONCE IT HAS BEGUN, IF THE AUDITING FIRMS WILL BRING ANY PROBLEMS THEY CANNOT RESOLVE TO HIM HE WILL DEAL WITH THEM. WE TOLD HIM THAT WE WOULD PASS ON HIS SUGGESTION, AND ASK FOR FURTHER INSTRUCTIONS.

5. AS FOR THE PHYSICAL PRESENCE OF THE U S FIRM LIMITED OFFICIAL USE

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IN LUGANO, WE HAVE NOT BEEN GIVEN A CLEAR INDICATION AS TO WHY THIS IS NECESSARY, NOR HAS MR MUELLER. WE DOUBT THAT IT CAN BE ARRANGED, IN VIEW OF WELL-KNOWN SWISS SENSITIVITIES AS TO THE ACTIVITIES OF FOREIGN INVESTIGATIVE BODIES WITHIN SWITZERLAND, BUT WE WILL TRY TO DO SO, OR TO FIND AN ALTERNATE SOLUTION, AS SOON AS THE REASONS ARE CLARIFIED AND WE HAVE A CLEARER IDEA OF THE REQUIREMENTS OF THE U S FIRM

TO PRESENT TO MR MUELLER.
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